

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
)
)

MM Docket No. 92-260

Cable Home Wiring)

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its opposition to petitions for reconsideration of the Commission's February 2, 1993 Report and Order filed in the above-captioned proceeding.

INTRODUCTION

Pursuant to section 16(d) of the 1992 Cable Act (the "Act"), the Commission promulgated rules concerning the disposition, after a subscriber to a cable system terminates service, of any wiring installed within the subscriber's premises. After balancing a variety of important interests affecting both cable operators and homeowners, the Commission prescribed rules which require cable operators to offer every terminating subscriber the opportunity to acquire the home wiring for its replacement cost.

These rules fully effectuate the statutory language and the underlying purposes of the Act, which are to avoid the disruption

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of having the wiring removed and to allow individual subscribers to utilize the wiring with an alternative multichannel video provider. In their petitions for reconsideration, however, the Wireless Cable Association, Inc., Liberty Cable Company, Inc. and Nynex Telephone Companies attempt to defeat the statute and to obtain a windfall from the home wiring provision at the expense of cable operators. NCTA urges the Commission to adhere to its initial decision in this proceeding.

DISCUSSION

I. CABLE OPERATORS SHOULD NOT BE COMPELLED TO GIVE THEIR WIRING TO ALTERNATIVE DISTRIBUTORS WITHOUT COMPENSATION

The Wireless Cable Association, Inc. ("WCA") claims that the new home wiring rules provide incentives for cable operators to "falsely proclaim an intention to remove wiring from the home of a terminating subscriber in order to prevent an alternative multichannel video distributor from utilizing that wiring during the thirty-day period afforded the cable operator to remove the wiring."^{1/} In this situation, WCA alleges, a cable operator effectively forces a customer either to go without service for up to thirty days or to tolerate the installation of a second cable.

In order to address this alleged problem, WCA urges the Commission to take three steps: (1) require the removal of

1/ Comments of WCA at 4.

wiring within seven days of the termination request; (2) bar a cable operator from terminating service until either the cable is removed or the seven day period lapses; and (3) establish procedures for the filing of complaints against cable companies demonstrating a pattern of claiming that they will remove the wiring and then not removing it.

It is readily apparent that WCA's proposal is merely an attempt to obtain a free ride off wiring installed by and belonging to the cable operator. And nothing in that proposal benefits consumers. WCA has created a false choice here -- go without service for thirty days or have two wires installed. There is no reason for a subscriber terminating its relationship with the cable operator to go without service for thirty days. If the subscriber wants to continue service during the disconnection period, the alternative provider could offer to pay for the wiring or to reimburse the homeowner when new service begins (e.g., allow a set-off on the subscriber's bill) -- at replacement cost. There is nothing inequitable about requiring a new provider of service to pay to acquire wiring that was installed by and belongs to the cable operator. As the Commission has recognized, the cable operator is entitled to recover for it.

Furthermore, the thirty-day time period ensures that subscribers have ample time to determine whether or not to purchase the wiring. If and only if the subscriber does not want the wiring may the operator remove it. And if it is not removed within thirty days, the operator loses all control over the

wiring. The Commission's rule serves consumers' interests, as Congress intended. Nothing in the Act, however, was meant to force cable operators to convey their wiring, free of charge, to their competitors. 2/

II. SECTION 16(D) ONLY APPLIES TO THE INTERNAL WIRING WITHIN A SUBSCRIBER'S PREMISES

A. Internal Wiring v. Common Wiring

In its petition, Liberty Cable Company, Inc. ("Liberty") seeks to revisit the line of demarcation between the subscriber's internal wiring and the common wiring in a multiple dwelling unit ("MDU"). Specifically, Liberty claims that setting the point of demarcation at twelve inches outside of where the wiring enters the outside wall of the subscriber's individual unit is meaningless because in some older MDUs such wiring is buried in a wall or concealed in a conduit. In these situations, Liberty maintains, the wiring is not readily accessible without causing damage to the building. Accordingly, Liberty urges the Commission to adopt an essentially ill-defined demarcation point somewhere within the common areas (e.g., stairwells, hallways,

2/ WCA also proposes that the Commission require cable operators to have "uniform purchase policies" for all terminating subscribers to ensure that installed cable is not given away free to all subscribers except those intending to use an alternative provider. Assuming, arguendo, that such discrepancies could arise, NCTA submits that the Commission's rule mandates that all cable operators must give every terminating subscriber the opportunity to

basements or rooftops) to facilitate easy access by alternative distributors.

As the Commission made clear in its Report and Order, however, Congress intended that the home wiring rule

apply to cable home wiring located within the premises of the subscriber, i.e., the internal wiring contained within the home or individual unit and not the wiring outside the home or the common wiring in apartment buildings and such.^{3/}

Consistent with the legislative history to Section 16(d), the Commission adopted the point of entry at twelve inches outside the subscriber's premises so as not to intrude on the common wiring. And, at the same time, designating an outside entry point gave "alternative providers adequate access to the cable home wiring so that they may connect the wiring to their systems without disrupting the subscriber's premises."^{4/} In most MDUs, this demarcation point is more than sufficient to accomplish this goal. Allowing a new service provider to go much beyond twelve inches clearly encroaches on the common wiring that is the property of the cable operator. This is not what Congress intended.

3/ In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, Report and Order, para. 10, (February 2, 1993) citing H.R. Rep. No. 628, 102d Cong., 2d Sess. at 118 (1992) ("House Report") (emphasis added). The Senate Report, similarly, states that the home wiring rule "shall not apply to any wiring outside the home." S. Rep. No. 92, 102d Cong., 1st Sess. at 23 (1991).

4/ Report and Order at para. 11.

Moreover, aside from the cable operator's property interests, there are safety and theft of service considerations. As NCTA pointed out in its initial comments, the cable operator must maintain control over the external cable plant in order to protect against hazardous conditions and unauthorized receipt of cable service. Allowing a new distributor the freedom to tap into the operator's plant wherever it deems appropriate -- particularly in apartment buildings -- risks serious signal leakage and other system compromises.

Nevertheless, there may be limited cases in which connecting a subscriber to a new distributor may not be feasible without causing serious damage to the common areas of a building. In those situations, an alternative video provider may seek a waiver or special relief under the Commission's rules. But there is no reason for the Commission to make a wholesale change in the rules governing the demarcation between internal and external wiring in contravention of the Act.

Another petitioner, Nynex Telephone Companies, advocates a wide demarcation line on the grounds that the ability to compete in an MDU is "substantially reduced" if the incumbent cable service provider controls the common wiring up to the twelve-inch point, thereby necessitating duplication of wiring.^{5/} Defying Congressional intent, it urges the Commission to extend the line of demarcation to some interface point "on the exterior

5/ Comments of Nynex at 3-4.

of the multiple unit premises" where there are no active electronics in the building.^{6/} Otherwise, Nynex asserts, a subscriber's control should extend to the point at which unpowered coaxial cable begins.

Under this proposal, the demarcation line could be set so far away from the individual premises that it would in effect make it impossible for a subscriber to exercise the option to purchase the internal wiring. In essence, Nynex would utilize a statutory provision aimed at individual residential consumers to force a franchised cable operator to convey its wiring to another provider without compensation. And by arrogantly citing the cost to install new wiring as a justification for its position, it ignores the fact that the incumbent cable operator incurred the expense to install the wiring throughout the MDU in the first place.

In sum, Liberty and Nynex have provided no justification to warrant a reconsideration of the Commission's initial decision to adopt rules that apply solely to internal wiring.

B. Ancillary Equipment

In addition to obtaining access to the wiring in the common areas of an MDU, Liberty seeks to include passive ancillary equipment within the definition of cable home wiring. In particular, Liberty desires free and unrestricted use of

6/ Id.

splitters and conduits or molding installed by the cable operator.

Again, the Act and its legislative history is clear that section 16(d) refers only to internal wiring and does not apply to any of the cable operator's other property located inside the home or any wiring, equipment or property located outside of the home or dwelling unit. In view of this, the Commission unequivocally defines home wiring to "mean only the cable itself" ^{7/} Its specific exclusion of active elements without mentioning passive elements is irrelevant. The Commission should not, therefore, include passive ancillary equipment within the meaning of home wiring.

III. THE COMMISSION APPROPRIATELY EXCLUDED "LOOP-THROUGH" WIRING FROM THE RULES

Liberty urges the Commission to amend its decision to exclude "loop-through" configured systems from the cable home wiring regulations in situations where all subscribers on the loop-through system wish to terminate cable service. In those cases, Liberty maintains, control over the wiring should be placed with the building owner. Nynex similarly asserts that the building owner, a so-called "neutral third party", should determine access to and use of the unpowered coaxial cable in a loop-through building. ^{8/}

7/ Report and Order at para. 8.

8/ Comments of Nynex at 4-5.

This again ignores the fundamental purpose of the home wiring provision -- to protect a consumer's ability to choose between alternative multichannel media. By placing this decision in the hands of the landlord, the subscriber would forfeit its rights to acquire the wiring for use with the service provider of its choice. Rather than enhancing competition between multiple providers, such a rule would merely give special protection to the landlord's preferred distributor.

Moreover, as NCTA pointed out in its initial comments in this proceeding, the anti-competitive effects of ceding control over home wiring to the building owner is particularly evident in the following situation: the franchised cable operator incurs the expense to install wiring throughout the building, whereupon the landlord unilaterally terminates the relationship, replaces the cable operator with a new distributor (with no franchise fee obligations) and forces the operator to relinquish its wiring. Under these circumstances, the Congressional goal of promoting competition is thwarted.

IV. SECTION 16(D) ONLY ENCOMPASSES THE DISPOSITION OF WIRING UPON TERMINATION OF SERVICE

In its petition, Nynex reiterates its attempt to defeat the language and intent of section 16(d) by urging the Commission to adopt rules requiring the conveyance of the wiring to the subscriber upon initial installation.

As the Commission notes, however, "the language of the statute refers only to disposition of cable home wiring after

termination of service."^{9/} "[W]e do not think", the Commission asserts, "it is necessary or appropriate under the statute to apply them [the rules] before the point of termination." Indeed, the legislative history emphasizes that "this section does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service."^{10/}

While the Commission notes that broader home wiring rules might be considered in the context of other proceedings, it lacks the authority to mandate conveyance of the wiring at installation under the Act.

9/ Report and Order at para. 6.

10/ House Report at 118. As the Commission recognized in the Report and Order, cable wiring is distinguishable from telephone wiring in several ways, notably the potential harm from signal leakage. Report and Order at para. 6.

CONCLUSION

For the foregoing reasons, the Commission should not reconsider its rules concerning the disposition of cable home wiring upon subscriber termination of service.

Respectfully submitted,

NATIONAL CABLE TELEVISION
ASSOCIATION

By Loretta Polk
Daniel L. Brenner
Loretta P. Polk

ITS ATTORNEYS
